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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/723,817	11/25/2003	Steven E. Sadinsky	50883/TJD/G316	8001
23363	7590	10/05/2004	EXAMINER	
CHRISTIE, PARKER & HALE, LLP			FERGUSON, MICHAEL P	
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3679

DATE MAILED: 10/05/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/723,817

Applicant(s)

SADINSKY, STEVEN E.

Examiner

Michael P. Ferguson

Art Unit

3679

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 26 August 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-23 is/are pending in the application.
- 4a) Of the above claim(s) 21-23 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 25 November 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 06/07/04.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Election/Restrictions

1. Applicant's election without traverse of Group I, claims 1-20, in the reply filed on August 26, 2004 is acknowledged.
2. Claims 21-23 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected group, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on August 26, 2004.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 18 and 20 are rejected under 35 U.S.C. 102(b) as being anticipated by Rasso (US 2,384,338).

As to claim 18, Rasso discloses a fence pole **6** comprising:

a lower end;

an insert **12** that is received within the lower end of the fence pole; and

a pin **11** that is adhesively (welded; column 2 lines 1-10) attached to the insert, the pin having a diameter smaller than that on the pole and a portion that protrudes from the lower end of the fence pole (Figure 1).

Art Unit: 3679

As to claim 20, Rasso discloses a fence pole 6 wherein the pin 11 is made of metal (Figure 1).

5. Claims 18 and 19 are rejected under 35 U.S.C. 102(b) as being anticipated by O'Fearn (US 4,576,364).

As to claim 18, O'Fearn discloses a fence pole 12 comprising:

a lower end;

an insert 18 that is received within the lower end of the fence pole; and

a pin 16 that is adhesively attached (column 2 lines 24-29) to the insert, the pin having a diameter smaller than that on the pole and a portion that protrudes from the lower end of the fence pole (Figure 2).

As to claim 19, O'Fearn discloses a fence pole 12 wherein the insert 18 is made of plastic (Figure 2).

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claim 20 is rejected under 35 U.S.C. 103(a) as being unpatentable over O'Fearn.

As to claim 20, O'Fearn fails to disclose a fence pole wherein the pin is made of metal.

The applicant is reminded that the selection of a known material based

Art Unit: 3679

upon its suitability for the intended use is a design consideration within the skill of the art. In re Leshin, 227 F.2d 197, 125 USPQ 416 (CCPA 1960). Accordingly, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify a fence pole as disclosed by O'Fearna to have a pin made of metal as such practice is a design consideration within the skill of the art.

8. Claims 1-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sadinsky et al. (US 5,664,769) in view of O'Fearna.

As to claim 1, Sadinsky et al. disclose a lightweight fence and gate for swimming pools surrounded by a deck comprising a plurality of poles **11** adapted to be inserted into the pool decking adjacent to the pool;

a mesh screen **IF** tensioned between the poles having top and bottom bindings;

a gate **G** in the fence including a frame having a pair of spaced upright support members **31,33**, a first horizontal brace **12** for spacing the upright support members and a length of mesh screen tensioned between the upright support members;

support means **21,22** capable of withstanding lateral tension forces of the screen for supporting and latching the gate;

hinges **H** secured to the support means on one side of the gate; and

a latch device **M** secured to the gate and to the support means on the opposite side of the gate (Figures 2, 3 and 5).

Art Unit: 3679

Sadinsky et al. fail to disclose a lightweight fence and gate wherein the poles include an insert that is contained within each pole and a pin that is adhesively attached to each insert, the pin protruding from the bottom of each pole.

O'Fearn teaches a lightweight fence comprising a plurality of poles **12** adapted to be inserted into the ground, the poles including an insert **18** that is contained within each pole and a pin **16** that is adhesively attached to each insert, the pin protruding from the bottom of each pole; the insert and pin providing for easy insertion of the poles into the ground, while providing for safe and easy carrying and storage of the poles, the insert and pin being pushed inside the pole during storage (Figure 2, column 1 lines 40-43, column 3 lines 33-36). Accordingly, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify a lightweight fence and gate as disclosed by Sadinsky et al. to have an insert and pin as taught by O'Fearn in order to provide for easy insertion of the poles, while providing for safe and easy carrying and storage of the poles.

As to claim 2, O'Fearn teaches a lightweight fence wherein an insert **18** is made of plastic (Figure 5, column 2 lines 50-55).

As to claim 3, Sadinsky et al. in view of O'Fearn fails to disclose a lightweight fence and gate wherein the pin is made of metal.

The applicant is reminded that the selection of a known material based upon its suitability for the intended use is a design consideration within the skill of the art. In re Leshin, 227 F.2d 197, 125 USPQ 416 (CCPA 1960). Accordingly,

Art Unit: 3679

it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify a lightweight fence and gate as disclosed by Sadinsky et al. in view of O'Fearna to have a pin made of metal as such practice is a design consideration within the skill of the art.

As to claim 4, Sadinsky et al. disclose a lightweight fence and gate wherein the support means **21,22** includes on each side of the gate **G** a pair of poles **21,22** inserted into the pool deck with cross members **24,25** attached to both of the pair of poles (Figure 3).

As to claim 5, Sadinsky et al. disclose a lightweight fence and gate wherein the gate **G** includes a generally U-shaped frame opening upwardly with the first horizontal brace **13** secured to the lower ends of the upright support members **31,33** and a second horizontal brace **CB** secured to the upright support members on the pool side of the mesh screen **IF** at a height well below the top of the gate fabric (Figure 3).

As to claim 6, O'Fearna teaches a fence wherein an insert **18** is polyvinylchloride (Figure 5, column 2 lines 50-55).

As to claim 7, Sadinsky et al. in view of O'Fearna fails to disclose a lightweight fence and gate wherein the pin is made of stainless steel.

The applicant is reminded that the selection of a known material based upon its suitability for the intended use is a design consideration within the skill of the art. In re Leshin, 227 F.2d 197, 125 USPQ 416 (CCPA 1960). Accordingly, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify a lightweight fence and gate as disclosed by

Art Unit: 3679

Sadinsky et al. in view of O'Fearna to have a pin made of stainless steel as such practice is a design consideration within the skill of the art.

As to claim 8, Sadinsky et al. disclose a fence wherein the support means **21,22** includes on each side of the gate **G** a pair of poles **21,22**, wherein the poles are inserted into the pool deck and wherein cross members **24,25** are attached to both poles (Figure 3). O'Fearna teaches a fence wherein a pair of poles **12** have a plastic insert **18** contained within each pole and a pin **16** that is attached to each insert, the pin protruding from the bottom of each pole, wherein the pins are inserted into the ground (Figure 2).

Sadinsky et al. in view of O'Fearna fails to disclose a lightweight fence and gate wherein the pin is made of metal.

The applicant is reminded that the selection of a known material based upon its suitability for the intended use is a design consideration within the skill of the art. In re Leshin, 227 F.2d 197, 125 USPQ 416 (CCPA 1960). Accordingly, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify a lightweight fence and gate as disclosed by Sadinsky et al. in view of O'Fearna to have a pin made of metal as such practice is a design consideration within the skill of the art.

As to claim 9, O'Fearna teaches a fence wherein a pin **16** is attached to a plastic insert **18** by an adhesive (Figure 2, column 2 lines 24-29).

As to claim 10, Sadinsky et al. disclose a lightweight fence and gate for swimming pools surrounded by a deck comprising a plurality of poles **11** adapted to be inserted into the deck adjacent the pool;

Art Unit: 3679

a first length of mesh screen **IF** tensioned between the poles defining the pool fence;

a gate **G** in the fence including a frame having a pair of spaced upright support members **31,33** and a second length of mesh screen tensioned between the upright support members of the gate; and

support means **21,22** to which the first length of mesh screen is attached for supporting the fence and gate and latching the gate including a truss structure capable of isolating the lateral tension forces of the first length of mesh screen on opposite sides of the gate (Figures 2, 3 and 5).

Sadinsky et al. fail to disclose a lightweight fence and gate wherein the poles include an insert that is contained within each pole and a pin that is attached to each insert, the pin protruding from the bottom of each pole.

O'Fearn teaches a lightweight fence comprising a plurality of poles **12** adapted to be inserted into the ground, the poles including an insert **18** that is contained within each pole and a pin **16** that is attached to each insert, the pin protruding from the bottom of each pole; the insert and pin providing for easy insertion of the poles into the ground, while providing for safe and easy carrying and storage of the poles, the insert and pin being pushed inside the pole during storage (Figure 2, column 1 lines 40-43, column 3 lines 33-36). Accordingly, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify a lightweight fence and gate as disclosed by Sadinsky et al. to have an insert and pin as taught by O'Fearn in order to

Art Unit: 3679

provide for easy insertion of the poles, while providing for safe and easy carrying and storage of the poles.

As to claim 11, O'Fearn teaches a fence wherein inserts **18** of poles **12** are made of plastic (Figure 5, column 2 lines 50-55).

As to claim 12, Sadinsky et al. in view of O'Fearn fails to disclose a lightweight fence and gate wherein the pin is made of metal.

The applicant is reminded that the selection of a known material based upon its suitability for the intended use is a design consideration within the skill of the art. In re Leshin, 227 F.2d 197, 125 USPQ 416 (CCPA 1960). Accordingly, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify a lightweight fence and gate as disclosed by Sadinsky et al. in view of O'Fearn to have a pin made of metal as such practice is a design consideration within the skill of the art.

As to claim 13, O'Fearn discloses a fence wherein pins **16** are attached to inserts **18** by an adhesive (Figure 2, column 2 lines 24-29).

As to claim 14. Sadinsky et al. disclose a method for installing a self closing gate in a tensioned removable swimming pool fence comprising a plurality of poles **11** interconnected by flexible mesh fencing **1F** comprising:

inserting a series of the plurality of poles into a deck surrounding a swimming pool with the flexible mesh fencing in tension to maintain the fence in tension;

the first and last poles of the series of poles defining a gate opening;

Art Unit: 3679

the first and last poles each constituting a pair of poles interconnected to each other to define a support structure **21,22** capable of absorbing the tension of the flexible mesh fencing;

fabricating a gate **G** including a pair of side rails **31,33**, a cross rail **12** and flexible mesh tensioned between the side rails;

hinging the first of the pair of side rails of the gate to the first of the pair of poles; and

installing a latch **M** between the second of the pair of side rails of the gate and the last pole of the tensioned fence;

whereby the gate is free to open and close without interference by the tension of the mesh of the fencing (Figures 2, 3 and 5).

Sadinsky et al. fail to disclose a method wherein the poles including an insert that is contained within each pole and a pin that is attached to each insert, the pin protruding from the bottom of each pole.

O'Fearn teaches a method for installing a fence comprising a plurality of poles **12** interconnected by flexible mesh fencing **10**, the poles including an insert **18** that is contained within each pole and a pin **16** that is attached to each insert, the pin protruding from the bottom of each pole; the insert and pin providing for easy insertion of the poles into the ground, while providing for safe and easy carrying and storage of the poles, the insert and pin being pushed inside the pole during storage (Figure 2, column 1 lines 40-43, column 3 lines 33-36).

Accordingly, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify a method as disclosed by Sadinsky et

Art Unit: 3679

al. to comprise an insert and pin as taught by O'Fearn in order to provide for easy insertion of the poles, while providing for safe and easy carrying and storage of the poles.

As to claim 15, O'Fearn teaches a method wherein an insert **18** is made of plastic (Figure 5, column 2 lines 50-55).

As to claim 16, Sadinsky et al. in view of O'Fearn fails to disclose a method wherein the pin is made of metal.

The applicant is reminded that the selection of a known material based upon its suitability for the intended use is a design consideration within the skill of the art. In re Leshin, 227 F.2d 197, 125 USPQ 416 (CCPA 1960). Accordingly, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify a method as disclosed by Sadinsky et al. in view of O'Fearn to have a pin made of metal as such practice is a design consideration within the skill of the art.

As to claim 17, O'Fearn teaches a method wherein a pin **16** is attached to an insert **18** with an adhesive (column 2 lines 24-29).

Conclusion

The prior art made of record and not relied upon is considered pertinent to the applicant's disclosure. The following patents show the state of the art with respect to fence poles:

Rosaen (US 2003/0222256 A1), Fingerson et al. (US 6,126,147) and Hunting Engineering Limited (GB 2 032 486) are cited for pertaining to fence poles having an insert and a pin.

Art Unit: 3679

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael P. Ferguson whose telephone number is (703)308-8591. The examiner can normally be reached on M-F (7:30-4:30).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Daniel P. Stodola can be reached on (703)308-2686. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-

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MPF

09/20/04



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